

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12182 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASH ASHOKBHAI SONI

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner
MR UR BHATT, AGP for respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City on 16th June, 2000 in exercise of powers conferred upon

him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained on 16th June, 2000 in pursuance of the above said order.

2. The detaining Authority took into consideration the 6 crimes registered against the petitioner and the investigation carried on in the above said crimes. The detaining authority has also took into consideration the statements of two witnesses who on assurance of anonymity offered statements against the petitioner. From the above materials, the detaining authority came to the conclusion that the petitioner was a headstrong person and hardened criminal and was indulged in theft activity, for which the crimes are registered against him. The detaining authority declared the petitioner as a "dangerous person" within the meaning of Section 2(c) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. Krishna Mishra for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. Amongst other contentions it was vehemently urged that the non-application of mind by the detaining authority qua the relevant facts of the case emerges from the order of detention and the grounds served upon the petitioner. It was urged that the detaining authority failed to consider the less drastic remedy available to the detaining authority to prevent the illegal and anti social activities of the petitioner. It was urged that on this ground alone the order of detention is vitiated and is required to be quashed and set aside.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995(2) GLR 1134 and again in LPA No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September, 1999, by Bench decision, this court ruled that the powers under Section 437(5) of the Cr.P.C. were far more wide in import and intent. The detaining authority failed to consider the said provision in both the above cases, the order of detention came to be quashed on this ground alone because the detaining authority failed to consider the less drastic remedy available to the detaining authority as to the cancellation of bail. This was considered to be non-application of mind by the detaining authority to the relevant aspects of the case. In the present case also, in the grounds of detention, the detaining authority has observed that in all the

crimes registered against the petitioner, he was released on bail and the illegal and anti social activities of the detenu continued during the bail also. It was further observed by the detaining authority that since the procedure for cancellation of bail was likely to take time, it was not considered fit by the the detaining authority to resort to such a remedy available. Thus, instead of resorting to the less drastic remedy of cancellation of bail available to the detaining authority, the detaining authority simply brushed aside by merely saying that the procedure for cancellation of bail was likely to consume more time. The non-application of mind on the part of the detaining authority is obvious qua this aspect of the case and, therefore, the order of detention passed by the detaining authority is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 16th June, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Subhash Ashokbhai Soni is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair